

Defending the Defender

Reviewed by
George V. Higgins

The reviewer is a former Massachusetts and federal prosecutor and the author of four novels as well as a book about Watergate to be published in the fall.

F. Lee Bailey comes into court like a line squall and, at least until fairly recently, lived the rest of his life in the same uproarious fashion. To prepare for the prosecution of a Bailey client, it was best to practice yelling a lot, allow a minimum of one week for liver regeneration, master the entire legislative and judicial history of the statute at issue, and husband your peremptory challenges in the hope of having enough of them to knock every single woman off the jury panel, because Bailey (to an audience of 12, at least) long ago found out what Robert Redford knows, and that'll play hell for a reasonable doubt.

That kind of behavior, embellished with Lear jets, helicopters, divorces, and much blunt talk on radio and television about the stupidity of one's adversaries, is not accorded universal acceptance, among lawyers in general, as satisfactorily decorous. Only if it fails to make the practitioner preeminent will it be tolerated, albeit with some snickering. You have to lose a lot, to get away with it. If it causes you public celebration, it engages the attention of sharpshooters not averse to citation of your excesses as grounds for your punishment: If you're a wild man, and you win a lot, it is best to take care when in hostile territory.

Bailey, who won a lot, was scornful of such care. Consequently he's not welcome to practice in New Jersey, and he's been roundly chided by the Supreme Judicial Court of Massachusetts. Arrogant enough to be humble when correctly rebuked, he does not now, in his recent book,

Book World

FOR THE DEFENSE. By F. Lee Bailey
(with John Greenya.)

(Atheneum 367 pp. \$10.95.)

"For the Defense," dispute that he was careless and perhaps deserved his various comeuppances.

What he thinks was undeserved was his indictment in the Koscot case. Koscot, for the serious-minded with larger questions to consider, is a corporate disguise of Glenn W. Turner, who proposed to get rich and stay out of trouble in this republic by recruiting a lot of people to peddle cosmetics from door to door, charging them anywhere from one to five big ones for the territorial franchises to the product line. Turner also offered one of those yippie-yip, mind-blowing, self-realization things called "Dare To Be Great," which went over big with the yokels and the confused, and made him even more money.

But Turner was wrong

about staying out of trouble. A passel of state attorneys general, the Federal Trade Commission, the Securities and Exchange Commission and several other normally somnolent watchdogs were roused from their torpor by recruits who paid their money but didn't get their face powders, and said that they'd been gypped.

Perceiving his midjudgment, Turner offered Bailey his expenses to fly around the country (at \$1 a mile) to try to straighten matters out, and a new Lear jet (say, \$250,000, more or less) if he brought it off. Bailey accepted.

It was either kust before that, or just afterward, that the United States postal inspectors found their interest

piqued by Turner, his positions, and his spiritual uplifts, and the way he might have used the mails to purvey them.

Some time ago, Bailey represented a gentleman suspected of contributing his felonious skills to the Plymouth mail robbery. Bailey conducted that case with vigor, hollered about it on the radio, and obtained from it great notoriety, the disapproval of the bar association and a very measured admiration from the postal inspectors. They were further enchanted by his characterization of them (in his 1971 book, "The Defense Never Rests") as, well, stupid.

Bailey now opines that the postals became intrigued with Turner when Turner hired Bailey.

On May 18, 1973, in the Orlando federal court, Turner and several others were indicted for mail fraud. Among the codefendants was F. Lee Bailey, accused of conspiring with Turner to hustle the suckers. Bailey, predictably, was enraged.

In 1973 and 1974, the United States government spent over eight months trying to prove that case against the Koscot defendants. Bailey's case was severed—taken from the jury shortly before the end, because he needed one of the other defendants to testify on his behalf. The jury was deadlocked on the remaining cases, found nobody guilty of conspiring with anybody, and went home.

Ordinarily, that will stimulate a modest soul-searching, you your thoughtful prosecutor. The government is not supposed to bring cases for the hell of it, squandering intimidating amounts of the taxpayers' money, tying up the courts

and demolishing the defendants financially. (Bailey says Turner dropped \$500,000 on the case, while Bailey's 12-man office dwindled to one because he could no longer meet the salaries. When you have hammered away at the guy for a few weeks, let alone several months, and come up empty, it is not inappropriate to wonder if perhaps you have taken your best shot, missed, and ought to leave him go.)

For that reason, Department of Justice policy calls for review of the mistried case to determine whether it should be retried. That was okay with Bailey, as far as Kascot was concerned: he says the only evidence against him was proffered by a man named Zoufaly, so arrant a liar that the government withdrew his testimony because it was perjurious.

Last year, Henry Petersen was in place as chief of the Justice Department's Criminal Division. Bailey importuned his review of the case. Presumably, he got it.

My most recent information is that the retrial in Kascot will commence this August. Bailey will perhaps be tried after that case, should the government win. He doesn't think that's very nice at all, and I agree with him.